

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 2/7/2005	Department ID Number: FIN 05-01

## CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** HONORABLE MAYOR CITY COUNCIL MEMBERS

**SUBMITTED BY:** PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR *Penelope Culbreth-Graft*

**PREPARED BY:** Dan T. Villella, Finance Officer *DV*

**SUBJECT:** Amend Ordinance 3117 - An Ordinance of the City of Huntington Beach Granting to Southern California Gas Company, a Corporation, the Right, Privilege, and Franchise to Lay and Use Pipes and Appurtenances for Transmitting, Distributing, and Measuring Gas for Any and All Purposes Under, Along, Across, or Upon the Public Streets, Ways, Alleys, and Places as the Same May Now or Hereafter Exist, Within Said Municipality

2005 JAN 26  
 HUNTINGTON BEACH, CA  
 CITY CLERK  
 ord. 3698

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:**

The City of Huntington Beach receives franchise revenue from Southern California Gas Company (Sempra Energy Corporation). The current agreement has been in place since 1958 and was most recently amended in 1991. In October, 2003, the Public Utilities Corporation (PUC) issued Resolution G-3557, that changed the formula used to calculate franchise revenue to Huntington Beach and all other cities in California. Payments under the new agreement began in December, 2003. Sempra would like the City to amend Ordinance 3117 – "An Ordinance of the City of Huntington Beach Granting to Southern California Gas Company, a Corporation, the Right, Privilege, and Franchise to Lay and Use Pipes and Appurtenances for Transmitting, Distributing, and Measuring Gas for Any and All Purposes Under, Along, Across, or Upon the Public Streets, Ways, Alleys, and Places as the Same May Now or Hereafter Exist, Within Said Municipality."

**Funding Source:** N/A. The City's consultant for franchise agreements, MBIA Muniservices Company, and Southern California Gas Company state that this change is revenue neutral to the City.

**Recommended Action:** Approve and adopt the proposed modification to City Ordinance 3117 to modify the City's franchise agreement with Sempra Energy.

**Alternative Action(s):** Reject the recommendation of Sempra Energy and pursue another mutually-agreeable methodology of computing the franchise payment. Since this change is revenue neutral to the City, it is unlikely that Sempra would accept any additional modifications if they would have the potential to increase their costs. To date, every California city with a franchise agreement with Sempra Energy, except for Huntington Beach and Pasadena, has accepted this change.

G-2c

## REQUEST FOR ACTION

MEETING DATE: 2/7/2005

DEPARTMENT ID NUMBER: FIN 05-01

### Analysis:

The franchise agreement with the City is a complex calculation. There are many variables including production costs, PUC regulations, State of California regulations, etc.

In December, 2003 Sempra Energy began using new PUC regulations to compute its franchise agreement payments. This change resulted from PUC Resolution G-3557. Huntington Beach was not notified of this change until December, 2004. Payments in 2004 were made using the new formula. Sempra would like the City to officially agree to the new franchise language.

The rate that was used to calculate the "imputed revenue" on transportation only gas (gas transported through the City, but not sold to customers in Huntington Beach) for the City of Huntington Beach as well as all other municipalities under PUC directives was the Core Subscription Weighted Average Cost of Gas (CS WACOG). The CS WACOG was eliminated in December 2003 (January 2004 billings) due to the elimination of the core subscription service contracts (non-core customers that elected to receive core service). Those customers are now under core or non-core service depending on their volume of usage. Due to the elimination of the CS WACOG, Sempra Energy was required to select a new rate to calculate the imputed revenue. The new adjusted core procurement charge rate (G-CPA) was created in December 2003. Sempra Energy and the PUC believe that the G-CPA is equivalent to the old CS WACOG.

Staff is recommending that the City adopt revisions to ordinance 3117 that will align the City with the intent of the PUC. Any new PUC or State regulations affecting the CS WACOG will automatically be taken into the City's franchise rate without the need for an additional ordinance.

Environmental Status: N/A

### Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Ordinance 3117 – An Ordinance of the City of Huntington Beach Granting to Southern California Gas Company, a Corporation, the Right, Privilege, and Franchise to Lay and Use Pipes and Appurtenances for Transmitting, Distributing, and Measuring Gas for Any and All Purposes Under, Along, Across, or Upon the Public Streets, Ways, Alleys, and Places as the Same May Now or Hereafter Exist, Within Said Municipality
15	2.	Proposed Amendment to Ordinance 3117
18	3.	Legislative Draft
20	4.	Resolution G-3357 of the Public Utilities Commission

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**ATTACHMENT #1**

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH

GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND MEASURING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID MUNICIPALITY.

The City Council of the City of Huntington Beach does ordain as follows:

SECTION ONE

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Southern California Gas Company, and its lawful successors or assigns;

(b) The word "City" shall mean the City of Huntington Beach, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(d) The word "Engineer" shall mean the Director of Public Works of the City;

(e) The word "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to lay and use pipes and appurtenances for transmitting, distributing and measuring gas for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City, and shall include and be in lieu of any existing or future City requirement to obtain a license or permit for the privilege of transacting and carrying on a business within the City.

(f) The word "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas, and shall include industrial gas as defined in Public Utilities Code §6201.3;

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(g) The phrase "pipes and appurtenances" shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting, distributing or measuring gas.

(h) The phrase "lay and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

## SECTION TWO

(a) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance, and pursuant to the provisions of Division 3, Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, and Article VI, Section 615 of the City Charter of the City of Huntington Beach, be and the same is hereby granted to Southern California Gas Company, a corporation organized and existing under and by virtue of the laws of the State of California, herein referred to as the "Grantee," to lay and use pipes and appurtenances for transmitting, distributing and measuring gas for any and all purposes, under, along, across or upon the streets of the City for a twenty (20) year term from and after the effective date hereof (January 1, 1990).

## SECTION THREE

(a) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a Franchise Fee annually which shall be equal to: i) two percent (2%) of the gross annual receipts of the Grantee derived from the sale of gas within the limits of the City under this Franchise, plus (ii) the "In Lieu Fee" of Section THREE (c).

(b) The Franchise Fee shall be paid in four installments, each installment being equal to two percent (2%) of the total gross revenues of the preceding calendar quarter employing the gross receipts formula, plus the amount of the In Lieu Fee for the preceding calendar quarter. Each installment shall be paid to the City on or prior to the twenty-fifth (25th) day of the second month following the respective quarter for which payment is made, except for the final quarterly payment for the year, which shall be paid on or prior to March 25th. For example, the installment for the first quarter of the year (January through March ) shall be paid to the City on May 25th.

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Upon notice by City that payments shall be made in accordance with subdivision (d) of this SECTION THREE, Grantee shall pay the franchise fee calculated under SECTION THREE (d) in installments as provided in the preceding paragraph, provided that for the first year under SECTION THREE (d) the amount of each of the first three installments shall be one-fourth of the amount of the total annual fee due for the year under subdivision (d) as estimated in good faith by Grantee, and the final yearly payment shall be the actual balance due as provided by SECTION THREE (d).

Any overpayment shall be recovered by Grantee by setoff against future installments, or, if the franchise has been terminated, such overpayment, or the balance thereof, shall be payable by City to Grantee upon written demand.

(c) The "In Lieu Fee" shall be equal to one and five-tenths percent (1.5%) of the "imputed value" of "non-proprietary gas" conducted, conveyed, transported, supplied and distributed to the City and/or its inhabitants within the City per calendar year, or fractional calendar year, during the term of this franchise. As used herein,

"non-proprietary gas" means gas that is conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee;

"imputed value" means the product of the actual volumes of such non-proprietary gas conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee during the period of calculation times: (1) until August 1, 1991, the average weighted cost of "non-core gas" for such period; (2) after August, 1991, the average weighted cost (WACOG) of gas under SoCalGas' procurement portfolio for all gas customers shall apply;

"non-core gas" means that gas which, in accordance with rules and directives adopted from time to time by the Commission, is purchased by the Grantee to serve its non-core classified commercial, industrial, utility electrical generating and wholesale customers (including, but not limited to, the category of customers for which it also transports and delivers non-proprietary gas within the City), and currently includes short-term discretionary gas purchased by Grantee for such customers.

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(d) In the event the legislature amends the Franchise Act of 1937 (Public Utilities Code §6201 - 6302) or enacts any other state law which increases the franchise payment to general law cities to a level greater than that provided in Section THREE (a) above, then the City shall have the option of prospectively employing the legislative formula, which shall apply for the remaining term of this agreement. If the City exercises said option, the legislative formula shall be prospectively applied hereto on the later of: a) the effective date of the legislation, or b) January 1 of the calendar year in which the City exercised said option.

(e) In the event that the "imputed value" cannot be determined using the methodologies identified in Section THREE (c) because such methodologies are no longer in use or no longer reasonably reflect the imputed value of non-proprietary gas, the City and Grantee shall agree upon a methodology that reasonably reflects the value of such non-proprietary gas.

(f) In the event that the UEG plants within the City have a combined annual "plant factor" of 50% or less or are not operational in any calendar year, the City may elect to receive, as its Franchise Fee for such year in lieu of the Franchise Fee calculated in accordance with Sections THREE (a) and (c), payments equal to four percent (4%) of the gross annual receipts of Grantee arising from the use, operation or possession of said Franchisee. Notice of this election shall be provided to Grantee no later than thirty (30) days prior to the date the final payment is due for the calendar year in question (e.g. February 23 or 24 in a Leap Year). The final yearly payment shall be the actual balance due in accordance with this method.

(g) Any notices under this SECTION THREE shall be in writing and be delivered by courier service or by certified mail, return receipt requested, to the other party at the address shown below or at such other address as the party may designate by written notice delivered in the manner provided for herein:

City of Huntington Beach  
P.O. Box 2740  
2000 Main Street  
Huntington Beach, California 92647

Attn: City Manager and City Attorney

Southern California Gas Company  
810 South Flower Street  
P.O. Box 3249  
Los Angeles, CA 90051-1249

Attn: Tax and Ad Valorem Tax Manager

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SECTION FOUR

(a) On or before the fifteenth day of March of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, the Grantee shall file with the City Clerk of the City, the original, and with the Director of Finance of the City, one copy of a statement showing the following:

(1) The total gross revenue under SECTION THREE received by the Grantee from the operation of its business in the City during the preceding calendar year, or fractional calendar year.

(2) The method (and supporting calculations) used to calculate the franchise fees which are payable to the City in accordance with this franchise [i.e., Franchise Fee, In Lieu Fee, or fees of SECTION THREE (d)].

(3) The total amount of all quarterly installments made by Grantee during the preceding calendar year or fractional calendar year.

(4) Such other data or information as City may reasonably need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to SECTION THREE, provided that the City shall request such data and information from Grantee in writing and shall deliver said request no less than 60 days prior to the due date of the above-described statement.

(b) Said statement shall be verified by the General Manager or authorized officer of the Grantee, and shall be in such form and detail as from time to time shall be reasonably prescribed by the Director of Finance.

(c) Within ten (10) days after the filing of said statement, the Grantee shall pay to City, at the office of the City Treasurer, in lawful money of the United States, the sums of money required to be paid by Grantee to City under SECTION THREE for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the quarterly installment amounts paid for such calendar or fractional calendar year.

(d) Any neglect, omission or refusal by Grantee to file the verified statement required under subsection (a) above, or to pay any required payments under SECTION THREE at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder, provided that Grantee shall not have cured said neglect, omission, or refusal to file or pay within twenty (20) days following written notice from the City of

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such failure to file or pay, or, if such neglect, omission or refusal is not reasonably subject to cure within such twenty (20) day period, Grantee has not commenced to cure such neglect, omission or refusal within such twenty (20) day period and has not continued to prosecute such cure to completion. The prevailing party in any action to collect or enforce SECTION THREE and/or FOUR, shall be entitled to reasonable attorney's fees.

#### SECTION FIVE

This grant is made in lieu of all other franchises owned by the Grantee, or by any successor of the Grantee to any rights under this Franchise, for transmitting, distributing and measuring gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the Franchise hereby granted shall operate as an abandonment of all such franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this Franchise is granted.

#### SECTION SIX

The Franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with additional territory, any and all franchise rights and privileges owned by Grantee therein shall likewise be deemed to be abandoned within the limits of such territory.

#### SECTION SEVEN

The Franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee; nor shall this Franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

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SECTION EIGHT

(a) Grantee shall construct, install and maintain all pipes and appurtenances in accordance with all of the ordinances, rules and regulations theretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(b) Grantee shall pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise;

(c) Grantee shall indemnify, defend, and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under this Franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this Franchise and each and every provision of Division 3, Chapter 2 of the California Public Utilities Code and Article VI, SECTION 615 of the City Charter of Huntington Beach.

(d) Upon abandonment of any of Grantee's facilities or equipment located above or below the surface of any street, Grantee shall notify the Engineer in writing of such abandonment within ninety (90) days thereafter.

(e) City shall have the right to change the grade, width or location of any street, or improve any street in any manner, including but not limited to the laying of any sewer, storm drain, conduit, water or other pipe, or construct and install any pedestrian tunnel, traffic signal, street lighting facility or other public improvement. If, in the opinion of the Engineer, such work shall require a change in the position or location of any of Grantee's facilities or equipment, Grantee, at its sole expense, within ninety (90) days after written notice from the Engineer, shall commence the work of doing any and all things to effect such change in position or location in conformity with the Engineers' written instructions; provided, however, that Grantee shall not be required to bear the expense of such work done at the request of the City if and to the extent that such request is on behalf, or for the benefit, of any private developer or other non-governmental entity so long as no expense, direct or indirect, results to the City. Nothing herein, however, is intended to modify or limit the provisions of Public Utilities Code §6297 (and as amended in the future) or the judicial appellate decisions of the State of California interpreting Public Utilities Code §6297 (and as amended in the future).

G-2C.10

(f) This franchise may not be transferred (voluntarily, involuntarily, or by operation of law), leased or assigned by the grantee except by consent in writing of the City Council, which shall not be unreasonably withheld or conditioned, and unless the transferee or assignees thereof shall covenant and agree to perform and be bound by each and all of the terms hereof. The grantee shall file with the City Clerk and City Administrator of the City within thirty (30) days after any sale, transfer, assignment of lease of this Franchise, or any part hereof, or of any of the rights or privileges granted hereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

#### SECTION NINE

(a) The City Treasurer, or any certified public accountant, or qualified person designated by the City, at any reasonable time during business hours, may make examination at the Grantee's offices of its books, accounts, and records, germane to and for the purpose of verifying the data set forth in the statement required by SECTION FOUR hereof and to and for any other purpose relating to the rendition of gas service by the Grantee within the City, or the charges to be made therefor.

#### SECTION TEN

(a) The Engineer shall have the right to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced by Grantee, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of such Engineer (such approval not to be unreasonably withheld); and all such construction shall be subject to the inspection of said Engineer and done to his or her reasonable satisfaction. All street coverings or openings of traps, vaults, and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line, and are not, in the reasonable opinion of the Engineer, hazardous to the public.

(b) Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, such work shall be done under a

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permit to be granted by the Engineer upon application therefor, and grantee shall restore such street, or portion of street, to as good a condition as existed before such work was done and such restoration shall be completed to the reasonable satisfaction of the Engineer.

#### SECTION ELEVEN

If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, said Grantee shall, at its own cost and expense, immediately repair any such damage and restore such portion of street, to as good condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his or her reasonable satisfaction.

#### SECTION TWELVE

(a) If the Grantee shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this Franchise forfeited.

(b) The City may sue in its own name for the forfeiture of this Franchise, in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions hereof.

#### SECTION THIRTEEN

The Grantee shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this Franchise; such payment to be made within thirty (30) days after the City shall furnish Grantee with a written statement of such expenses.

G-2C.12

SECTION FOURTEEN

Not later than thirty (30) days after the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the Franchise hereby granted, and an agreement to comply with the terms and conditions hereof.

SECTION FIFTEEN

This ordinance shall take effect thirty (30) days after its adoption, and shall be deemed effective as of January 1, 1990. The City Clerk shall certify to the adoption of this ordinance and shall cause a synopsis of the same to be published once in the Daily Pilot newspaper.

Attest:

Connie Brockway  
City Clerk

Peter Green  
Mayor

INITIATED AND APPROVED:

[Signature]  
Deputy City Administrator

APPROVED TO FORM:

Gail Kuttan  
City Attorney  
5-8-91

REVIEWED AND APPROVED:

[Signature]  
City Administrator

G-2c.13

STATE OF CALIFORNIA )  
 COUNTY OF ORANGE ) ss:  
 CITY OF HUNTINGTON BEACH )

I, CONNIE BROCKWAY, the duly elected, qualified City Clerk of the City of Huntington Beach and ex-officio Clerk of the City Council of the said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing ordinance was read to said City Council at a regular \_\_\_\_\_ meeting thereof held on the 20th day of May 1991, and was again read to said City Council at a regular \_\_\_\_\_ meeting thereof held on the 3rd day of June, 1991, and was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council.

AYES: Councilmembers:

MacAllister, Winchell, Silva, Green, Kelly, Robitaille, Moulton-Patterson

NOES: Councilmembers:

None

ABSENT: Councilmembers:

None

I, Connie Brockway CITY CLERK of the City of Huntington Beach and ex-officio Clerk of the City Council, do hereby certify that a synopsis of this ordinance has been published in the Daily Pilot on	
<u>6/13</u>	<u>1991</u>
In accordance with the City of Huntington Beach City.	
<u>CONNIE BROCKWAY</u>	City Clerk
<u>Kate Whitney</u>	Deputy City Clerk

*Connie Brockway*

City Clerk and ex-officio Clerk  
 of the City Council of the City  
 of Huntington Beach, California

G-2c.14

G-2c.15

**ATTACHMENT #2**

ORDINANCE NO. 3698

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING ORDINANCE NO. 3117 WHICH GRANTED TO SOUTHERN  
CALIFORNIA GAS COMPANY THE FRANCHISE TO LAY AND USE PIPES  
AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING  
AND MEASURING GAS FOR ANY AND ALL PURPOSES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That Section 3(c) of Huntington Beach Ordinance No. 3117 is hereby amended to read as follows:

(c) The "In Lieu Fee" shall be equal to one and five-tenths percent (1.5%) of the "imputed value" of "non-proprietary gas" conducted, conveyed, transported, supplied and distributed to the City and/or its inhabitants within the City per calendar year, or fractional calendar year, during the term of this franchise. As used herein,

"non-proprietary gas" means gas that is conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee;

"imputed value" means the product of the actual volumes of such non-proprietary gas conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee during the period of calculation multiplied by the adjusted core procurement serve rate most recently approved by resolution of the California Public Utilities Commission and as that resolution may be later amended, so long as that rate reasonably reflects the imputed value of non-proprietary gas;

"non-core gas" means that gas which, in accordance with rules and directives adopted from time to time by the Commission, is purchased by the Grantee to serve its non-core classified commercial, industrial, utility electrical generating and wholesale customers (including, but not limited to, the category of customers for which it also transports and delivers non-proprietary gas within the City), and currently includes short-term discretionary gas purchased by Grantee for such customers.

SECTION 2. Except as specifically modified herein, all other Sections and subsections of Ordinance No. 3117 shall remain in full force and effect.

G-2C.16



SECTION 3. This ordinance shall become effective 30 days after its adoption.

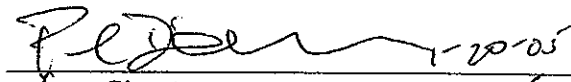
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor

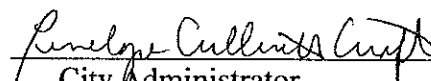
ATTEST:

\_\_\_\_\_  
City Clerk

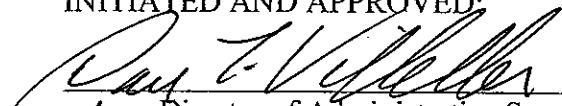
APPROVED AS TO FORM:

 1-20-05  
for City Attorney SCS  
1-20-05

REVIEWED AND APPROVED:

  
City Administrator

INITIATED AND APPROVED:

  
for Director of Administrative Services

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**ATTACHMENT #3**

**LEGISLATIVE DRAFT**

(c) The "In Lieu Fee" shall be equal to one and five-tenths percent (1.5%) of the "imputed value" of "non-proprietary gas" conducted, conveyed, transported, supplied and distributed to the City and/or its inhabitants within the City per calendar year, or fractional calendar year, during the term of this franchise. As used herein,

"non-proprietary gas" means gas that is conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee;

"imputed value" means the product of the actual volumes of such non-proprietary gas conducted, conveyed, transported, supplied and distributed, but not sold, to the City and/or its inhabitants within the City by Grantee during the period of calculation times: ~~(1) until August 1, 1991, the average weighted cost of "non-core gas" for such period; (2) after August, 1991, the average weighted cost (WACOG) of gas under SoCalGas' procurement portfolio for all gas customers shall apply~~ **multiplied by the adjusted core procurement serve rate most recently approved by resolution of the California Public Utilities Commission and as that resolution may be later amended, so long as that rate reasonably reflects the imputed value of non-proprietary gas;**

"non-core gas" means that gas which, in accordance with rules and directives adopted from time to time by the Commission, is purchased by the Grantee to serve its non-core classified commercial, industrial, utility electrical generating and wholesale customers (including, but not limited to, the category of customers for which it also transports and delivers non-proprietary gas within the City), and currently includes short-term discretionary gas purchased by Grantee for such customers.

G-2C.19

G-2C.20

**ATTACHMENT #4**

DEC 08 2004

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3357

OCTOBER 16, 2003

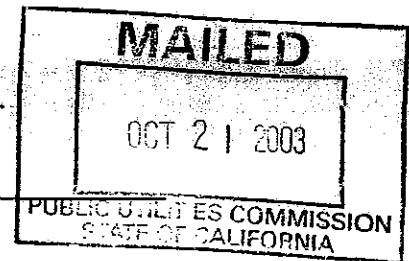
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RESOLUTION

Resolution G-3357. Southern California Gas Company (SoCalGas) requests revisions to several tariff schedules to accommodate the impending elimination of the core subscription tariff. SoCalGas's request is approved.

By SoCalGas Advice Letter (AL) 3268, filed June 12, 2003.



SUMMARY

With the termination of Core Subscription service (G-CS), SoCalGas needs a new mechanism to comply with the intent of PU Code Section 6353(b), which directs gas utilities to determine the franchise fee surcharge for certain transportation customers according to its "... tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor."<sup>1</sup> The franchise fee surcharge is used to collect funds to reimburse municipalities and counties for the utility's use of public lands. The condition noted in the PU Code is very soon to become inapplicable for SoCalGas as the last of its Core Subscription contracts expires on December 1, 2003.

The Procurement Charge component of the G-CS rate has also been used as an input in several other tariff schedules. In this AL, SoCalGas develops an equivalent replacement for the G-CS Procurement Charge, to be called the adjusted core procurement rate (Schedule G-CPA). This G-CPA is used in calculating: the municipal surcharge (Schedule G-MSUR), the Buy-Back rate for Transportation Imbalance charges (Schedule G-IMB), the rate cap for utility payments to customers related to Voluntary Core Protection Purchase Agreements (VCPA) deliveries as defined in Rule 23; and purchases of storage

<sup>1</sup> "Core subscription" is a service whereby a utility procures gas for noncore customers.

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gas as defined in Rule 32. This Resolution approves the modifications to the various tariff schedules necessary to accommodate the impending termination of the SoCalGas Core Subscription Service (Schedule G-CS).

## **BACKGROUND**

### **Franchise Fee Surcharge:**

The franchise fee surcharge was established in response to regulatory policies which affected the amount collected by energy utilities to pay municipalities and counties for the use of public lands in the course of fulfilling their service obligations.<sup>2</sup> Specifically, the franchise fee surcharge was devised to "... replace, but not increase, franchise fees that would have been collected pursuant to this division if not for changes in the regulatory environment such as the "unbundling" of the gas industry."<sup>3</sup>

SoCalGas collects the franchise fee surcharge from the appropriate gas transportation customers under Schedule G-MSUR, as published in its tariff. The schedule stipulates that the franchise fee surcharge applies to the volume of gas sent over the utility's transportation system.

PU Code section 6353 (b) specifies that one determinant used to develop the franchise fee surcharge for gas utilities is its "... tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor." Until recently, SoCalGas was able to set the surcharge rate in harmony with this statutory provision by using the Procurement Charge of the Core Subscription rate. However, SoCalGas will terminate its Core Subscription service on December 1, 2003.

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<sup>2</sup> Senate Bill 278 (Stat. 1993, Ch. 233)

<sup>3</sup> See PU Code section 6350.

Termination of the Core Subscription rate:

In Decision (D.) 01-12-018 the Commission ordered SoCalGas to discontinue Core Subscription service.<sup>4</sup> Core Subscription service was closed to new customers on January 1, 2002 and will be completely eliminated effective December 1, 2003 as the last of the core subscription contracts expires. The expiration of this rate necessitates a new mechanism to fulfill the intent of PU Code 6353 (b).

The Core Subscription rate has also been used in the Buy-Back Rate associated with the Transportation Imbalance Service, Schedule G-IMB, as well as in Rules 23 and 32. In Rule 23, the Core Subscription rate is used to cap the utility payments to customers related to Voluntary Core Protection Purchase Agreements (VCPPA) deliveries. In Rule 32 the Core Subscription rate is used to value gas placed in storage.

Creation of New Rate:

In the instant filing, SoCalGas proposes a new rate, the adjusted Gas Procurement Service rate (G-CPA), to take the place of the expiring Procurement Charge of the Core Subscription rate. This rate is comprised of: (1) the Weighted Average Cost of Gas (WACOG), as detailed in D.98-07-068; (2) authorized franchise fees and uncollectible expenses; (3) Core Purchased Gas Account (CPGA) adjustments; (4) Gas Cost Incentive Mechanism (GCIM) rewards/penalties. It is exclusive of core storage withdrawals and authorized core brokerage fees.

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<sup>4</sup> SoCalGas filed compliance AL 3100 on December 26, 2001 and AL 3100-A on January 28, 2002, discontinuing Core Subscription service. On February 27, 2003, the Commission passed Resolution G-3334, denying nine ALs associated with D.01-12-018, including AL 3100-A. The Commission explained in a follow-up letter that as a result of the filings and Commission actions, AL 3100-A had gone into effect on January 1, 2002 and gone out of effect on February 27, 2003. On April 1, 2003 SoCalGas filed AL 3252 closing Core Subscription service and requesting an effective date of February 27, 2003. This was approved on June 4, 2003. As far as Core Subscription is concerned, the result of this procedural flurry is that Core Subscription service has been continuously closed to new customers since January 1, 2002.

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PG&E proposed the same methodology when it faced the termination of its core subscription service last year. The Commission approved PG&E's proposal in Resolution G-3326 on April 22, 2002.

### **NOTICE**

Notice of AL 3268 was made by publication in the Commission's Daily Calendar. SoCalGas states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

### **PROTESTS**

Advice Letter AL 3268 was not protested.

### **DISCUSSION**

We have reviewed the AL filing by SoCalGas and find that it complies with the intent of PU Code 6353 (b) in correctly assessing the municipal surcharge. The tariff changes to other schedules and rules correctly incorporate the new G-CPA rate which was created to accommodate the elimination of Core Subscription service.

### **COMMENTS**

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **FINDINGS**

1. Pursuant to Commission orders, SoCalGas' Core Subscription service has been closed to new customers since January 1, 2002.
2. The last existing Core Subscription service contract will expire December 1, 2003.
3. PU Code Section 6353(b) directs gas utilities to determine the franchise fee surcharge for certain transportation customers according to its "... tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor."

4. The impending termination of the Core Subscription service necessitates a new way to comply with the intent of PU Code Section 6353(b) in Schedule G-MSUR.
5. A new rate schedule is also required for Schedules G-IMB and for Rule 23 and Rule 32 to accommodate the elimination of the Core Subscription Procurement Charge.
6. In the instant filing, SoCalGas proposes a new rate, the adjusted Gas Procurement Service rate (G-CPA), to take the place of the expiring Procurement Charge of the Core Subscription rate. This rate is comprised of: (1) the Weighted Average Cost of Gas (WACOG), as detailed in D.98-07-068; (2) authorized franchise fees and uncollectible expenses; (3) Core Purchased Gas Account (CPGA) adjustments; (4) Gas Cost Incentive Mechanism (GCIM) rewards/penalties. It is exclusive of core storage withdrawals and authorized core brokerage fees.
7. In Resolution G-3326, the Commission approved a similar proposal by PG&E when it faced the termination of its core subscription service.
8. The instant filing complies with the intent of PU Code 6353 (b) in correctly assessing the municipal surcharge.
9. The tariff changes to other schedules and rules correctly incorporate the new G-CPA rate which was created to accommodate the elimination of Core Subscription service.

**THEREFORE IT IS ORDERED THAT:**

1. The request of SoCalGas in AL 3268 to create a new adjusted Core Procurement service rate, equivalent to and replacing the Procurement Charge of the Core Subscription rate, is approved.

G-2C.25

October 16, 2003

This Resolution is effective December 1, 2003.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 16, 2003; the following Commissioners voting favorably thereon:



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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

G-2C.26

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